

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

April 18, 2024

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324a Proceeding
	)	OCAHO Case No. 2023A00054
	)	
PASQUEL HERMANOS, INC.	)	
Respondent.	)	
_____	)	

Appearances: Omega Cape, Esq., for Complainant  
Guillermo G. Alarcon, Esq., for Respondent

ORDER CONVERTING MOTION TO AMEND COMPLAINT TO A MOTION TO  
SUPPLEMENT TO COMPLAINANT’S MOTION FOR SUMMARY DECISION

I. PROCEDURAL HISTORY

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), filed a complaint alleging that Respondent, Pasquel Hermanos, Inc., violated § 1324a(a)(1)(B). On May 11, 2023, Respondent filed an answer.

On January 17, 2024, Complainant filed both a Motion for Summary Decision and a Motion to Amend the Complaint. In its Motion to Amend the Complaint, Complainant provides an updated exhibit (the original exhibit was attached to the Complaint). The Motion to Amend contains no argument as to why the Complaint should be amended at this stage of the litigation. Upon further examination of its contents, the Motion to Amend appears only to inform the Court and Respondent that Complainant wishes to note that one of the 22 individuals in the Count is referred to by an alternate last name in payroll documents, and two other individuals named in the Count were unauthorized workers. No additional individuals were added to the Count, and no additional counts were proposed. Respondent did not file an opposition to Complainant’s Motion to Amend the Complaint.

## II. LAW & ANALYSIS

Under OCAHO’s Rules, a complaint must contain “[t]he alleged violation of law, with a clear and concise statement of facts for each violation alleged to have occurred.” 28 C.F.R. § 68.7(b)(3). “OCAHO does not require complainants ‘to present evidence at the pleading stage.’” *United States v. R&SL Inc.*, 13 OCAHO no. 1333, 3 (2019) (quoting *United States v. Mar-Jac Poultry, Inc.*, 10 OCAHO no. 1148, 10 (2012)).<sup>1</sup> A request to amend the complaint is a request to essentially alter the allegations before the Court. By way of example, an amendment may be appropriate when the complainant seeks to abandon some, but not all allegations;<sup>2</sup> or when the complainant seeks to change the charging language to align the allegation with the proposed violation identified in the Notice of Intent to Fine.<sup>3</sup>

While Complainant styles the submission as a motion to amend, it appears to be moving the Court to consider additional information related to penalty aggravation (not liability). Complainant does not identify or propose a violation under a different section of the statute; Complainant does not seek to add or remove a Count; Complainant does not seek to add or remove individuals from the Count. The Court will exercise its discretion to consider the substance of the filing over the title, and will convert the Motion to Amend the Complaint to a supplement to the Motion for Summary Decision (both were filed on the same day). In doing so, the Court considered the contemporaneous nature of the two filings and that Respondent did not oppose this motion. Complainant’s converted motion to supplement its summary decision motion is GRANTED and the additional submission will be considered in tandem with its motion for summary decision.

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<sup>1</sup> Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

<sup>2</sup> *United States v. KLJ Leasing, LLC*, 16 OCAHO no. 1446, 1, 3 (2022).

<sup>3</sup> *United States v. Sal’s Lounge*, 15 OCAHO no. 1394a, 3-4 (2021).

III. CONCLUSION

Mindful of its obligation to provide adequate notice and due process to Respondent, the Court now provides Respondent 30 days from the receipt of this Order to provide an updated Opposition filing. Respondent is reminded to review the Court's order dated February 1, 2024. *United States v. Pasquel Hermanos, Inc.*, 18 OCAHO no. 1506a (2024).

SO ORDERED.

Dated and entered on April 18, 2024.

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Honorable Andrea R. Carroll-Tipton  
Administrative Law Judge